



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

May 15, 2003

Mr. James G. Nolan
Legal Services Division
Texas Department of Protective and Regulatory Services
P.O. Box 149030
Austin, Texas 78714-9030

OR2003-3290

Dear Mr. Nolan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181151.

The Texas Department of Protective and Regulatory Services (the "department") received a request for all contracts, ICSQ's, contract monitoring documents, audits, and correspondence related to contracts, monitoring, disallowed expenses or audits for Daystar Residential, Shiloh RTC, and any related facilities or companies for a specified time period. You advise that you will release some of the requested information, including certain cost reports you have submitted. You claim that the remaining requested information is excepted from disclosure under section 552.116 of the Government Code. We have considered the exception you claim and have reviewed the submitted representative sample of information.¹

Section 552.116 of the Government Code provides as follows:

- (a) An audit working paper of an audit of the state auditor or the auditor of a state agency or institution of higher education as defined by Section 61.003, Education Code, is excepted from [public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

¹ In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(b) In this section:

(1) 'Audit' means an audit authorized or required by a statute of this state or the United States and includes an investigation.

(2) 'Audit working paper' includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116.

You state that the department is authorized to conduct audits pursuant to section 40.058 of the Human Resources Code and sections 700.1801(9) and (11) of title 40 of the Administrative Code. You indicate that the submitted records that are at issue consist of auditors' notes and documents that were obtained or generated in conducting such audits. You claim that these records therefore constitute "audit working papers" that are excepted from disclosure under section 552.116(a) of the Government Code. Upon review of your arguments and the records at issue, we conclude that these records constitute information prepared or maintained in conducting an audit or audits authorized by statute. Therefore, the department may withhold this information pursuant to section 552.116.

We also note that a private e-mail address is contained within the submitted information that you do not seek to withhold. Section 552.137 of the Government Code requires a governmental body to withhold an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body, unless the member of the public has affirmatively consented to its release. See Gov't Code § 552.137(a), (b). You do not inform us that the member of the public to whom the private e-mail address belongs has affirmatively consented to the release of the e-mail address contained in the submitted materials. Therefore, the e-mail address we have marked must be withheld under section 552.137.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

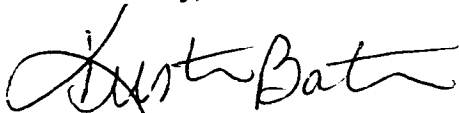
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristen Bates", with a stylized, flowing script.

Kristen Bates
Assistant Attorney General
Open Records Division

KAB/lmt

Ref: ID# 181151

Enc. Submitted documents

c: Mr. Doug Swanson
The Dallas Morning News
P.O. Box 655237
Dallas, Texas 75265
(w/o enclosures)